

EXHIBIT 19
FILED UNDER SEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
 :
Plaintiffs :
 :
v. : No. 1:23-cv-00108
 :
GOOGLE, LLC, :
 :
Defendants. :

Friday, August 18, 2023

Video Deposition of COL. JOHN HORNING,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:34 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6060378

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>4 ANTITRUST DIVISION</p> <p>5 BY: JIMMY MCBIRNEY, ESQ.</p> <p>6 CHASE PRITCHETT, ESQ.</p> <p>7 ALVIN CHU, ESQ.</p> <p>8 MARK SOSNOWSKY, ESQ. - Via Zoom</p> <p>9 KATHERINE CLEMONS, ESQ - Via Zoom</p> <p>450 5th Street, N.W.</p> <p>7 Washington, DC 20530</p> <p>202.514.2414</p> <p>8 jimmy.mcbirney@usdoj.gov</p> <p>chase.pritchett@usdoj.gov</p> <p>9 alvin.chu@usdoj.gov</p> <p>mark.sosnowsky@usdoj.gov</p> <p>10 katherine.clemons@usdoj.gov</p> <p>11 Representing - The United States of America</p> <p>12</p> <p>13 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,</p> <p>14 BY: MARTHA L. GOODMAN, ESQ.</p> <p>15 LEAH HIBBLER, ESQ.</p> <p>2001 K St NW,</p> <p>15 Washington, DC</p> <p>202.223.7341</p> <p>16 mgoodman@paulweiss.com</p> <p>lhhibbler@paulweiss.com</p> <p>17</p> <p>18 Representing - Google LLC</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 Glenn Fortner - Legal Videographer</p> <p>25 Major Mohamed Al-Darsani - United States Army</p> <p>Edwin Farley - USDOJ Intern</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning.</p> <p>2 We're going on the record at 9:34 on August 18th,</p> <p>3 2023. Please note that the microphones are</p> <p>4 sensitive and may pick up whispering and private</p> <p>5 conversations. Please mute your phones at this</p> <p>6 time. Audio and video recording will continue to</p> <p>7 take place unless all parties agree to go</p> <p>8 off the record.</p> <p>9 This is Media Unit 1 of the</p> <p>10 video-recorded deposition of Colonel John Horning</p> <p>11 in the matter of United States, et al., v. Google</p> <p>12 LLC. The location of the deposition is Paul</p> <p>13 Weiss.</p> <p>14 My name is Glenn Fortner, representing</p> <p>15 Veritext, and I'm the videographer. The court</p> <p>16 reporter is Ryan Black from the firm Veritext.</p> <p>17 I'm not related to any party in this action, nor</p> <p>18 am I financially interested in the outcome.</p> <p>19 If there are any objections to</p> <p>20 proceeding, please state them at the time of your</p> <p>21 appearance. Counsel and all present, including</p> <p>22 remotely, will now state their appearances and</p> <p>23 affiliations for the record beginning with the</p> <p>24 noticing attorney.</p> <p>25 MS. GOODMAN: Martha Goodman, from the</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 TESTIMONY OF: COL. JOHN HORNING PAGE</p> <p>3 By Ms. Goodman.....6, 244</p> <p>4 By Mr. McBirney.....245</p> <p>5 EXHIBITS</p> <p>6 EXHIBIT DESCRIPTION PAGE</p> <p>7 Exhibit 61 a privilege log dated June 26th,</p> <p>2023, provided by the United</p> <p>8 States DOJ.....11</p> <p>9 Exhibit 62 a document Bates Numbered</p> <p>ARMY-ADS336340 through 336638...154</p> <p>10</p> <p>Exhibit 63 a document Bates Numbered</p> <p>11 ARMY-ADS329948 through 329970...165</p> <p>12 Exhibit 64 a document Bates Numbered</p> <p>ARMY-ADS187047 through 187077...211</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 law firm Paul Weiss, on behalf of Google LLC.</p> <p>2 I'm joined by my colleague Leah Hibbler.</p> <p>3 MR. MCBIRNEY: Jimmy McBirney, with the</p> <p>4 Unites Staes Department of Justice, on behalf of</p> <p>5 the United States and the witness.</p> <p>6 MR. PRITCHETT: Chase Pritchett, on</p> <p>7 behalf of the United States.</p> <p>8 MR. CHU: Alvin Chu on behalf of the</p> <p>9 United States.</p> <p>10 MR. SOSNOWSKY: Mark Sosnowsky on behalf</p> <p>11 of the United States.</p> <p>12 MAJOR AL-DARSANI: Moe Al-Darsani,</p> <p>13 United States Army.</p> <p>14 MR. FARLEY: Edwin Farley, United</p> <p>15 States.</p> <p>16 THE VIDEOGRAPHER: Okay. Will the court</p> <p>17 reporter please swear in the witness and then</p> <p>18 counsel may proceed.</p> <p>19 MR. CHU: Oh, also, just to let you</p> <p>20 know, I have Katherine Clemons -- she'll be --</p> <p>21 from the DOJ that will also joining in and out.</p> <p>22 * * *</p> <p>23 Whereupon --</p> <p>24 COL. JOHN HORNING,</p> <p>25 called to testify, having been first duly sworn</p>

<p style="text-align: right;">Page 6</p> <p>1 or affirmed, was examined and testified as</p> <p>2 follows:</p> <p>3 * * *</p> <p>4 EXAMINATION</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Good morning, Colonel Horning.</p> <p>7 A. Good morning.</p> <p>8 Q. Have you been deposed before?</p> <p>9 A. I have not.</p> <p>10 Q. Do you understand your purpose here</p> <p>11 today is to provide truthful and accurate</p> <p>12 testimony to the best of your testimony and</p> <p>13 knowledge?</p> <p>14 A. I do.</p> <p>15 Q. Is there any reason you cannot do that</p> <p>16 today?</p> <p>17 A. No.</p> <p>18 Q. Okay. Because the court reporter is</p> <p>19 writing everything down, it's important that we</p> <p>20 not talk over one another, so please let me</p> <p>21 finish my question before you begin your answer.</p> <p>22 Okay?</p> <p>23 A. Okay.</p> <p>24 Q. And because he's again taking a written</p> <p>25 transcript, the -- you have to speak verbally as</p>	<p style="text-align: right;">Page 8</p> <p>1 that.</p> <p>2 Q. Have you ever requested legal advice</p> <p>3 from the Department of Justice Antitrust</p> <p>4 Division?</p> <p>5 MR. MCBIRNEY: Objection. Calls for</p> <p>6 privileged information. Instruct the witness not</p> <p>7 to answer.</p> <p>8 MS. GOODMAN: You're asking him -- the</p> <p>9 information that would appear on a privilege log</p> <p>10 with a request for legal advice that's required</p> <p>11 for you as the privilege -- the party asserting a</p> <p>12 privilege to establish the proprietary of the</p> <p>13 privilege and meet your burden of proof and</p> <p>14 persuasion that the privilege applies, you're</p> <p>15 instructing him not to answer that question?</p> <p>16 MR. MCBIRNEY: You are asking the</p> <p>17 witness whether he has requested legal advice</p> <p>18 from the Department of Justice Antitrust</p> <p>19 Division?</p> <p>20 MS. GOODMAN: Yeah.</p> <p>21 MR. MCBIRNEY: You can answer that yes</p> <p>22 or no.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. To what extent has anybody at the</p>
<p style="text-align: right;">Page 7</p> <p>1 opposed to with sounds like uh-huh or huh-uh</p> <p>2 so that it can be accurately reflected in the</p> <p>3 transcript. Okay?</p> <p>4 A. I understand.</p> <p>5 Q. If you don't understand my question,</p> <p>6 please let me know. Okay?</p> <p>7 A. Yes.</p> <p>8 Q. Otherwise I assume you'll understand.</p> <p>9 Okay?</p> <p>10 A. Yes.</p> <p>11 Q. In the normal course of your work, do</p> <p>12 you consider the Department of Justice Antitrust</p> <p>13 Division to be your counsel?</p> <p>14 A. I'm not sure that I'm qualified to</p> <p>15 answer, within the legal constructs of the U.S.</p> <p>16 government, who our actual counsel is or is not.</p> <p>17 Q. I'm not asking for you to provide a</p> <p>18 legal opinion. I'm asking for your personal</p> <p>19 understanding and your considerations, your</p> <p>20 personal opinions. So do you consider the</p> <p>21 Department of Justice Antitrust Division to be</p> <p>22 your counsel in the normal course of your work?</p> <p>23 A. I don't believe that I have a personal</p> <p>24 opinion on who our counsel is. I only know</p> <p>25 what's -- yeah. I -- I don't have an opinion on</p>	<p style="text-align: right;">Page 9</p> <p>1 Department of Justice ever asked you to provide</p> <p>2 information about the Army's advertising</p> <p>3 business?</p> <p>4 MR. MCBIRNEY: Objection. Privileged.</p> <p>5 Instruct the witness not to answer.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Are you going to follow that</p> <p>8 instruction, sir?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. When did you first have any</p> <p>11 conversations with anybody at the Department of</p> <p>12 Justice Antitrust Division?</p> <p>13 A. As best that I can recall, our first</p> <p>14 interaction would have been in early spring of</p> <p>15 2023 or late winter. I -- I can't recall the</p> <p>16 specific date.</p> <p>17 Q. So sometime between late winter of what</p> <p>18 year?</p> <p>19 A. 2023.</p> <p>20 Q. Okay. And early spring of 2023?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. What was your understanding</p> <p>23 of the reason for your conversations with the</p> <p>24 Department of Justice Antitrust Division?</p> <p>25 MR. MCBIRNEY: Objection. Calls for</p>

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<p style="text-align: right;">Page 10</p> <p>1 privileged information. Instruct the witness not</p> <p>2 to answer.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Are you following that instruction?</p> <p>5 A. Yes.</p> <p>6 Q. Has the Department of Justice ever</p> <p>7 requested information about digital advertising</p> <p>8 purchases by the United States Army?</p> <p>9 MR. MCBIRNEY: Objection. Calls for</p> <p>10 privileged information. Instruct the witness not</p> <p>11 to answer.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Are you following that instruction?</p> <p>14 A. Yes.</p> <p>15 Q. Do you -- in the course of your work,</p> <p>16 do you routine -- do you field requests for</p> <p>17 information from the Department of Justice on</p> <p>18 an ordinary basis?</p> <p>19 A. I do not.</p> <p>20 Q. Are you aware of anybody else within</p> <p>21 the AEMO who re -- regularly fields requests for</p> <p>22 information from the Department of Justice?</p> <p>23 A. I'm not personally aware of anything</p> <p>24 like that.</p> <p>25 MS. GOODMAN: I'm marking Exhibit 61, a</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. I'm sorry. I meant Page 11.</p> <p>2 A. Okay.</p> <p>3 Q. It's line entry 23 on Page 11.</p> <p>4 A. Okay.</p> <p>5 Q. So one, two, three, four, five columns</p> <p>6 over, you're listed in the To column. Do you see</p> <p>7 that?</p> <p>8 A. I do.</p> <p>9 Q. And do you see the date in the few-more</p> <p>10 columns over of January 5th, 2023?</p> <p>11 A. Okay.</p> <p>12 Q. Does that refresh your recollection of</p> <p>13 the time period where you first had conversations</p> <p>14 with the Department of Justice Antitrust</p> <p>15 Division?</p> <p>16 A. Can you help me understand what it is</p> <p>17 I'm actually looking at here?</p> <p>18 Q. Yeah. So this is what's called a</p> <p>19 privilege log.</p> <p>20 A. I'm not familiar with what one of those</p> <p>21 are.</p> <p>22 Q. Okay. A privilege log is a</p> <p>23 document that parties are required to provide</p> <p>24 to the opposing side when they're asserting</p> <p>25 attorney-client or attorney work product or other</p>
<p style="text-align: right;">Page 11</p> <p>1 privilege log dated June 26th, 2023, provided by</p> <p>2 the United States in this litigation. I'm</p> <p>3 handing it to the witness.</p> <p>4 (Exhibit No. 61, a privilege log dated</p> <p>5 June 26th, 2023, provided by the United States</p> <p>6 DOJ, was introduced.)</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Now, Colonel Horning, this is not a</p> <p>9 document I would normally show a percipient</p> <p>10 witness, but I'm essentially hamstrung and must</p> <p>11 do so here today for reasons that don't pertain</p> <p>12 to you, per se. But I would like you to turn to</p> <p>13 Page 11 of this document.</p> <p>14 Let me know when you're there.</p> <p>15 A. Okay. I am on Page 11.</p> <p>16 Q. Okay. And if you look back at Page 1,</p> <p>17 actually, you see there is a heading at the top</p> <p>18 that indicate what each of the columns are.</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So you see that in the, one, two,</p> <p>21 three, four, five -- fifth column over on Page</p> <p>22 23, which is the To column, your name is</p> <p>23 listed --</p> <p>24 A. On? I'm sorry. Could you say what page</p> <p>25 again? I thought you said Page 23.</p>	<p style="text-align: right;">Page 13</p> <p>1 privilege over communications --</p> <p>2 A. Okay.</p> <p>3 Q. -- that they are not providing to</p> <p>4 the other side in litigation. So that's what a</p> <p>5 privilege log is. And so by virtue of this</p> <p>6 entry, on Line 23 the United States is asserting</p> <p>7 a privilege, as described in the last column, --</p> <p>8 A. Okay.</p> <p>9 Q. -- over your communication with</p> <p>10 Mr. Wessels and others --</p> <p>11 A. Okay.</p> <p>12 Q. -- listed on this page.</p> <p>13 A. Okay.</p> <p>14 Q. Do you understand now?</p> <p>15 MR. MCBIRNEY: Objection. Assumes facts</p> <p>16 not in evidence. Form of the question.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Do you understand -- do you have an</p> <p>19 appropriate understanding now of what a privilege</p> <p>20 log is?</p> <p>21 A. I do understand what this document is</p> <p>22 now.</p> <p>23 Q. Okay. So having now looked at this</p> <p>24 document and understanding what it is, does it</p> <p>25 refresh your memory at all that -- as to the</p>

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1 timing of your conversations with the Antitrust
2 Division?
3 MR. MCBIRNEY: Objection; foundation,
4 and to form.
5 THE WITNESS: It does not refresh my
6 recollection, but I have no reason to believe
7 this is not true.
8 BY MS. GOODMAN:
9 Q. Okay. And you see in the column next to
10 the date, which is the subject -- if you look
11 back at Page 1, you can see that that is the
12 subject column.
13 A. Yes.
14 Q. Okay. Can you read the subject to me
15 here?
16 A. The subject on Item 23 of the privilege
17 log says, brackets, "external DOJ-Army interview
18 on Google-Meta advertising products used by DOD."
19 Q. Okay. Do you recall who was interviewed
20 -- who at the Army was interviewed on Google-Meta
21 advertising products used by DOD on or around
22 this date of January 5th, 2023?
23 MR. MCBIRNEY: You can answer that yes
24 or no.
25 THE WITNESS: I do not recall.

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1 BY MS. GOODMAN:
2 Q. Okay. Do you recall yourself being
3 interviewed on this topic?
4 A. I recall being interviewed, but I do not
5 recall that this was the date for it.
6 Q. Okay. Do you recall who interviewed
7 you?
8 A. I only recall -- I didn't -- there was
9 likely more than one person. I only recall one
10 by name.
11 Q. Who do you recall by name?
12 A. Mr. Chase Pritchett.
13 Q. Okay. How long did the interview last?
14 A. I can't be certain. I think it was,
15 likely, 60 to 90 minutes, perhaps.
16 Q. And this is a yes or no question: Did
17 the United States Antitrust Division lawyers
18 present explain to you the purpose of the
19 interview?
20 MR. MCBIRNEY: Objection. Calls for
21 privileged communication. Instruct the witness
22 not to answer.
23 BY MS. GOODMAN:
24 Q. Are you following that instruction?
25 A. Yes.

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1 Q. What was your understanding of the
2 purpose of the interview?
3 MR. MCBIRNEY: Objection. Calls for
4 privileged information. Instruct the witness not
5 to answer.
6 BY MS. GOODMAN:
7 Q. Are you following that instruction?
8 A. Yes.
9 Q. What facts -- strike that.
10 At the time reflected here on this
11 log, --
12 A. Mm-hmm.
13 Q. -- January 5th, 2023, were you aware of
14 any anticompetitive conduct on the part of Google
15 affecting the Army's advertising --
16 MR. MCBIRNEY: Objection.
17 BY MS. GOODMAN:
18 Q. -- practices?
19 MR. MCBIRNEY: Objection. Calls for a
20 legal conclusion.
21 BY MS. GOODMAN:
22 Q. You may answer.
23 A. I'm not sure that I have -- am
24 qualified to know or would have been made
25 available any infor -- or would have had any

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1 information available to me on that topic.
2 Q. Around this time of January 5th, 2023,
3 were you aware of any conduct on the part of
4 Google that was causing the Army to pay prices
5 for advertising that were too high?
6 A. I had not been made aware of anything
7 like that at the time frame that you're asking.
8 Q. Okay. How about prior to the time frame
9 that I'm asking?
10 A. Not that I can recall, no.
11 Q. Okay. What's your understanding of the
12 word anticompetitive?
13 MR. MCBIRNEY: Objection. Calls for
14 legal conclusion, and foundation.
15 THE WITNESS: I only know the common
16 language terminology. I don't understand the
17 actual legal definitions or implications.
18 Anticompetitive: Not competitive.
19 BY MS. GOODMAN:
20 Q. So what is your common language
21 understanding of the word anticompetitive?
22 A. I understand it in the context of
23 business practices meaning not adhering to a
24 competitive, fair practice.
25 Q. Okay. So using your definition of

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<p style="text-align: right;">Page 18</p> <p>1 anticompetitive, which is in the context of</p> <p>2 business practicing -- practices meaning "not</p> <p>3 adhering to a competitive, fair practice," at</p> <p>4 this time, January 5th of 2023, were you aware</p> <p>5 of any anticompetitive practices on the part of</p> <p>6 Google affecting the Army's advertising?</p> <p>7 MR. MCBIRNEY: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: I was not aware.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. At the time of this discussion with the</p> <p>12 DOJ, what was your understanding, if any, as to</p> <p>13 the possibility of litigation?</p> <p>14 MR. MCBIRNEY: Objection. Calls for</p> <p>15 privileged information. You can answer that</p> <p>16 question if you can answer it without divulging</p> <p>17 any privileged information. If you cannot, then</p> <p>18 I'll instruct you not to answer.</p> <p>19 THE WITNESS: Can you repeat the</p> <p>20 question?</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. At the time of the discussion with DOJ</p> <p>23 on or around January 5th, 2023, what was your</p> <p>24 understanding, if any, as to the possibility of</p> <p>25 litigation?</p>	<p style="text-align: right;">Page 20</p> <p>1 MS. GOODMAN: Confidential information?</p> <p>2 MR. MCBIRNEY: I'm sorry. Privileged</p> <p>3 information.</p> <p>4 MS. GOODMAN: Thank you.</p> <p>5 THE WITNESS: I have no personal opinion</p> <p>6 about attending a meeting. As a soldier, I</p> <p>7 received an order. I do what I'm told.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. From whom did you receive an</p> <p>10 order, if anyone?</p> <p>11 A. From AEMO leadership.</p> <p>12 Q. Who in AEMO leadership?</p> <p>13 A. As best as I re -- can recall, the AEMO</p> <p>14 chief of staff.</p> <p>15 Q. Who's that?</p> <p>16 A. Colonel Matt Weinrich.</p> <p>17 Q. Why did Mr. Weinrich -- I'm sorry,</p> <p>18 Colonel Weinrich order you to participate in this</p> <p>19 meeting?</p> <p>20 MR. MCBIRNEY: Objection. Calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: Yeah. I -- I can't answer</p> <p>23 as to why he chose me.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Okay. Did he explain to you why he</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. MCBIRNEY: Same instruction. If</p> <p>2 you can answer that without disclosing privileged</p> <p>3 information, you may. Otherwise, I instruct you</p> <p>4 not to answer.</p> <p>5 THE WITNESS: None.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Around the time of this meeting</p> <p>8 -- strike that.</p> <p>9 Around the time of these communications</p> <p>10 with the Department of Justice about Google-Meta</p> <p>11 advertising products used by DOD, what were your</p> <p>12 personal views on having to participate in those</p> <p>13 discussions?</p> <p>14 MR. MCBIRNEY: Objection; vague.</p> <p>15 THE WITNESS: Can you clarify the</p> <p>16 question to the extent what was my personal view</p> <p>17 of being involved in a meeting?</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Yes. What was your personal view of</p> <p>20 being involved in a meeting or discussions with</p> <p>21 the Antitrust Division about Google advertising</p> <p>22 -- Meta advertising products used by DOD?</p> <p>23 MR. MCBIRNEY: Same objection. And</p> <p>24 caution the witness not to divulge confidential</p> <p>25 information in your answer.</p>	<p style="text-align: right;">Page 21</p> <p>1 chose you?</p> <p>2 A. No.</p> <p>3 Q. When did he order you to -- to</p> <p>4 participate in these discussions?</p> <p>5 A. I can't recall a -- a specific date. As</p> <p>6 best as I can recall, it was via an email saying</p> <p>7 that there was going to be individuals who needed</p> <p>8 to ask questions and I should make myself</p> <p>9 available, but I don't remember when.</p> <p>10 Q. Okay. Anything else you remember about</p> <p>11 that email and what it said?</p> <p>12 A. No, I don't.</p> <p>13 Q. Did you have any discussions outside of</p> <p>14 email with Colonel Weinrich about this request?</p> <p>15 A. No.</p> <p>16 Q. And setting aside the fact that you</p> <p>17 received an order to participate in discussions</p> <p>18 with the Department of Justice on this topic,</p> <p>19 is it your testimony you had no personal view</p> <p>20 whatsoever as to your participation in such</p> <p>21 meetings?</p> <p>22 MR. MCBIRNEY: Object to the form and</p> <p>23 asked and answered.</p> <p>24 THE WITNESS: Yeah. I have no personal</p> <p>25 opinion on -- on attending the meeting.</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 30</p> <p>1 ads. And I -- I certainly -- I can't recall a</p> <p>2 specific instance that would answer your question</p> <p>3 without it being a little more specific.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. Have you asked anybody at the</p> <p>6 advertising agency DDB to give you volume of ads</p> <p>7 purchased, cost, cost of such ads, dates of such</p> <p>8 purchases, vendors, whether it be Google or</p> <p>9 some other vendor through which the ads were</p> <p>10 purchased, as to the Army's -- and I'll narrow</p> <p>11 it further -- digital advertising purchases?</p> <p>12 MR. MCBIRNEY: Again, I'm going to</p> <p>13 instruct the witness if you're able to answer</p> <p>14 that question without disclosing privileged</p> <p>15 communications from counsel, you may do so. If</p> <p>16 you are not, then I instruct you not to answer.</p> <p>17 THE WITNESS: Okay. On the advice of</p> <p>18 counsel, I'm not going to answer that question.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Okay. To your knowledge -- has anybody</p> <p>21 at AEMO, so not yourself, but anybody else with</p> <p>22 whom you work or know, to your knowledge has</p> <p>23 anybody else at AEMO asked the advertising agency</p> <p>24 DDB to give you -- to give AEMO volumes of ad</p> <p>25 purchased, cost, dates, vendors or other</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. MCBIRNEY: Again, I'm going to</p> <p>2 instruct the witness if he can answer that</p> <p>3 without disclosing privileged information, you</p> <p>4 may do so. Otherwise, I would instruct you not</p> <p>5 to answer.</p> <p>6 THE WITNESS: Can you repeat the</p> <p>7 question?</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Has anybody at DDB provided you</p> <p>10 personally with any information about the Army's</p> <p>11 digital advertising purchases of the kind that we</p> <p>12 just described, such as dates of purchase, cost,</p> <p>13 vendor?</p> <p>14 MR. MCBIRNEY: Same instruction.</p> <p>15 THE WITNESS: Not that I can recall.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Okay. To your knowledge, has anybody at</p> <p>18 DDB provided anybody else, other than yourself at</p> <p>19 AEMO, with information about the Army's digital</p> <p>20 advertising purchases of the kind that we just</p> <p>21 described, such as dates of purchase, cost or</p> <p>22 vendor?</p> <p>23 MR. MCBIRNEY: Object to the form of the</p> <p>24 question. Calls for speculation. And instruct</p> <p>25 the witness that if you can answer the question</p>
<p style="text-align: right;">Page 31</p> <p>1 information in that nature regarding the Army's</p> <p>2 digital advertising purchases?</p> <p>3 MR. MCBIRNEY: I object to the form of</p> <p>4 the question and instruct the witness that if</p> <p>5 you can answer the question without disclosing</p> <p>6 privileged information, you may do so. If you</p> <p>7 cannot, then I instruct you not to answer.</p> <p>8 THE WITNESS: To the best of my</p> <p>9 knowledge, yes.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. Who at AEMO, to your knowledge,</p> <p>12 has asked DDB for such information?</p> <p>13 MR. MCBIRNEY: Again, I'm going to</p> <p>14 instruct the witness if you can answer that</p> <p>15 question without disclosing privileged</p> <p>16 information, you may do so. Otherwise,</p> <p>17 instruct the witness not to answer.</p> <p>18 THE WITNESS: Okay. On the advice of</p> <p>19 counsel, I'm not going to answer that question.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. To your knowledge -- well, strike that.</p> <p>22 Has anybody at DDB provided you,</p> <p>23 personally, with information about the Army's</p> <p>24 digital advertising purchases of the kind that we</p> <p>25 just described, dates, cost, vendor?</p>	<p style="text-align: right;">Page 33</p> <p>1 without disclosing privileged information, you</p> <p>2 may do so. If not, I would instruct you not to</p> <p>3 answer.</p> <p>4 THE WITNESS: I have no personal</p> <p>5 knowledge of that occurring.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay. Do you have knowledge other than</p> <p>8 personal knowledge of that occurring?</p> <p>9 MR. MCBIRNEY: Objection; foundation.</p> <p>10 Calls for speculation. And same instruction.</p> <p>11 THE WITNESS: I don't know what</p> <p>12 "knowledge other than personal" means.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. At the time that you first became</p> <p>15 involved in discussions with the Department of</p> <p>16 Justice in the late winter 2023 time period, did</p> <p>17 you consider their inquiries to be a routine</p> <p>18 request for information?</p> <p>19 MR. MCBIRNEY: Objection; vague.</p> <p>20 THE WITNESS: At the time I first became</p> <p>21 aware, I had no indication the purpose at all.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Did you have a -- did you have</p> <p>24 a view -- so setting aside the Department's</p> <p>25 purpose, which I'm not asking about, I'm asking</p>

<p style="text-align: right;">Page 34</p> <p>1 about your personal reactions to receiving</p> <p>2 an inquiry -- inquiry from the Department of</p> <p>3 Justice, how did you view it? As a routine</p> <p>4 request for information? As fact-gathering?</p> <p>5 What was your personal view of the nature of the</p> <p>6 inquiry?</p> <p>7 MR. MCBIRNEY: Object to the form of the</p> <p>8 question and vague.</p> <p>9 THE WITNESS: I viewed it as a routine</p> <p>10 request for information.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Okay. Has the Department of Justice</p> <p>13 asked you to get information from the advertising</p> <p>14 agency DDB?</p> <p>15 MR. MCBIRNEY: Obj --</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Yes or no.</p> <p>18 MR. MCBIRNEY: Objection. Calls for</p> <p>19 privileged information. I instruct the witness</p> <p>20 not to answer.</p> <p>21 THE WITNESS: I'm not going to answer</p> <p>22 the question on advice of question.</p> <p>23 MS. GOODMAN: That question is</p> <p>24 completely proper because it goes to your</p> <p>25 assertion to which you bear a burden of proof and</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. So, Colonel Horning, I'll ask you again</p> <p>2 so that I can get an answer or your -- well, get</p> <p>3 a clean record, I should say.</p> <p>4 Has anybody at the Department of</p> <p>5 Justice asked you to get any information from</p> <p>6 your advertising agency DDB?</p> <p>7 MR. MCBIRNEY: Objection. Calls for</p> <p>8 privileged communication. Instruct the witness</p> <p>9 not to answer.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Are you following that instruction?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Has anybody at the Department of</p> <p>14 Justice asked you to have any conversations with</p> <p>15 any person from your advertising agency DDB?</p> <p>16 MR. MCBIRNEY: Objection. Calls for</p> <p>17 privileged information. Instruct the witness not</p> <p>18 to answer.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Are you following that instruction?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. To your knowledge, has anybody</p> <p>23 at the Department of Justice asked any other</p> <p>24 employee of AEMO to obtain information from the</p> <p>25 advertising agency DDB?</p>
<p style="text-align: right;">Page 35</p> <p>1 persuasion as to your claim of privilege.</p> <p>2 MR. MCBIRNEY: You are asking</p> <p>3 the witness to disclose communications of a</p> <p>4 particularized nature from counsel, which is</p> <p>5 clearly work product. So that instruction is</p> <p>6 entirely proper, and I'm instructing the witness</p> <p>7 not to answer.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. Has the Department of Justice --</p> <p>10 anybody at the Department of Justice asked you</p> <p>11 to participate in any conversations with your</p> <p>12 advertising agency?</p> <p>13 MR. MCBIRNEY: Same objection. Instruct</p> <p>14 the witness not to answer.</p> <p>15 You are asking the witness for</p> <p>16 particular communications from counsel.</p> <p>17 MS. GOODMAN: No. They're very</p> <p>18 generalized communications. We've talked about</p> <p>19 the term "information" being very generalized.</p> <p>20 MR. MCBIRNEY: Even if they're</p> <p>21 generalized, they're communications from counsel.</p> <p>22 MS. GOODMAN: Of the kind that appear on</p> <p>23 privilege log. This is exactly what you have to</p> <p>24 put on a privilege log.</p> <p>25 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. MCBIRNEY: Objection. Calls for</p> <p>2 privileged information. Instruct the witness not</p> <p>3 to answer.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Are you following that instruction?</p> <p>6 A. Yes.</p> <p>7 Q. To your knowledge, has anybody at the</p> <p>8 Department of Justice asked any other employee of</p> <p>9 AEMO to have any conversations with any person</p> <p>10 from the advertising agency DDB?</p> <p>11 MR. MCBIRNEY: Objection. Calls for</p> <p>12 privileged information, and instruct the witness</p> <p>13 not to answer.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Are you following that instruction?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware of any investigation by</p> <p>18 the Department of Justice into Google?</p> <p>19 MR. MCBIRNEY: You can answer that yes</p> <p>20 or no.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. When did you first become aware of that</p> <p>24 investigation?</p> <p>25 MR. MCBIRNEY: I'm going to instruct the</p>

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<p style="text-align: right;">Page 38</p> <p>1 witness that if you can answer that question</p> <p>2 without disclosing privileged information you may</p> <p>3 do so. If you cannot, then I instruct you not to</p> <p>4 answer.</p> <p>5 THE WITNESS: I'm not going to answer</p> <p>6 that question on the advice of counsel.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. Prior to late winter 2023, as</p> <p>9 we've discussed, had anybody from anyone within</p> <p>10 the government reached out to you inquiring about</p> <p>11 the Army's digital advertising purchases?</p> <p>12 MR. MCBIRNEY: Objection; vague and</p> <p>13 instruct the witness that if you can answer</p> <p>14 that question without disclosing privileged</p> <p>15 information, you may do so. If you cannot,</p> <p>16 then I instruct the witness not to answer.</p> <p>17 THE WITNESS: I don't recall any</p> <p>18 communication previous to what we already</p> <p>19 discussed.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. And how about prior to late</p> <p>22 winter 2023, did you have any outreach from</p> <p>23 anybody within the United States government about</p> <p>24 any anticompetitive conduct on the part of Google</p> <p>25 affecting the United States Army? And when I use</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. When did you receive a litigation hold,</p> <p>3 if any?</p> <p>4 MR. MCBIRNEY: Objection. Assumes</p> <p>5 facts not in evidence and calls for privileged</p> <p>6 information. Instruct the witness not to answer.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Are you following that instruction?</p> <p>9 A. Yes.</p> <p>10 Q. Who sent you a litigation hold, if any?</p> <p>11 MR. MCBIRNEY: Same objections.</p> <p>12 Instruct the witness not to answer.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Are you following that instruction?</p> <p>15 A. Yes.</p> <p>16 Q. When did you first become aware that</p> <p>17 your participation in this lawsuit would be re --</p> <p>18 necessary?</p> <p>19 MR. MCBIRNEY: Objection. Assumes facts</p> <p>20 not in evidence. Vague.</p> <p>21 THE WITNESS: I first became aware that</p> <p>22 I would be a participant within the last two</p> <p>23 weeks.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Prior to the last two weeks, have you</p>
<p style="text-align: right;">Page 39</p> <p>1 the word anticompetitive, I'm using your</p> <p>2 definition?</p> <p>3 MR. MCBIRNEY: Objection; vague.</p> <p>4 Instruct the witness that if you can answer</p> <p>5 that question without disclosing privileged</p> <p>6 communication you may do so. If not, I instruct</p> <p>7 the witness not to answer.</p> <p>8 THE WITNESS: I cannot recall a</p> <p>9 time prior to then when anyone from the U.S.</p> <p>10 government reached out to me on any topic related</p> <p>11 to any practice of any vendor or company involved</p> <p>12 in advertising.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And that includes Google?</p> <p>15 MR. MCBIRNEY: Objection; vague.</p> <p>16 THE WITNESS: My recollection, as</p> <p>17 previously stated, would include Google.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Okay. Have you received a litigation</p> <p>20 hold?</p> <p>21 MR. MCBIRNEY: Objection. Calls for</p> <p>22 privileged information. Instruct the witness not</p> <p>23 to answer.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Are you following that instruction?</p>	<p style="text-align: right;">Page 41</p> <p>1 assisted anybody in the Department of Justice</p> <p>2 with gathering information related to this</p> <p>3 litigation?</p> <p>4 MR. MCBIRNEY: Objection; vague and</p> <p>5 calls for privileged information. Instruct the</p> <p>6 witness not to answer.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Have you gathered any information in</p> <p>9 order to provide discovery to Google in this</p> <p>10 litigation?</p> <p>11 MR. MCBIRNEY: You can answer that yes</p> <p>12 or no.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Are you aware one way or another if your</p> <p>16 emails have been searched or produced to Google?</p> <p>17 MR. MCBIRNEY: You can answer.</p> <p>18 THE WITNESS: I'm not aware if it has or</p> <p>19 has not occurred.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. Do you recall providing any</p> <p>22 information for the purpose of answering written</p> <p>23 questions called interrogatories in this</p> <p>24 litigation?</p> <p>25 MR. MCBIRNEY: Ob -- you can answer that</p>

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<p style="text-align: right;">Page 186</p> <p>1 uses more than one provider of display</p> <p>2 advertising?</p> <p>3 A. I do not know who or how many are even</p> <p>4 available. I don't know the answer to that.</p> <p>5 Q. Okay. Let's go to Estimated Potential</p> <p>6 for Efficient ROI. Have you formed an assessment</p> <p>7 of Google's potential for efficient ROI?</p> <p>8 MR. MCBIRNEY: Objection; vague.</p> <p>9 THE WITNESS: Again, any assessment</p> <p>10 would be not of Google as a whole, but of</p> <p>11 depending on the channel product itself.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. So let's talk first about Search.</p> <p>14 What is your view on the potential for efficient</p> <p>15 ROI with respect to Search?</p> <p>16 A. The information that I've seen</p> <p>17 throughout our quarterly MMMs has indicated or</p> <p>18 given me the impression that Search has been an</p> <p>19 efficient channel for us.</p> <p>20 Q. Same question as to YouTube.</p> <p>21 A. Generally speaking, as I can best recall</p> <p>22 from the MMM reports, YouTube tends to perform</p> <p>23 fairly well comparatively on an efficiency</p> <p>24 standpoint relative to the various channels in</p> <p>25 the marketing mix.</p>	<p style="text-align: right;">Page 188</p> <p>1 distribution of our message, I don't see how</p> <p>2 Google has a role in protecting, considering it's</p> <p>3 available to so many. I wouldn't think they have</p> <p>4 a role in protecting anybody's. That's our</p> <p>5 responsibility to look at and assess where any</p> <p>6 distribution platform, channel, site that we may</p> <p>7 be -- any -- any of those things, any of these</p> <p>8 actual media networks or properties are a fit for</p> <p>9 brand safety.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. I see.</p> <p>12 A. So I don't think Google is a yes or a no</p> <p>13 specifically.</p> <p>14 Q. Do you view Google as a risky</p> <p>15 distribution channel for the brand safety of the</p> <p>16 Army?</p> <p>17 MR. MCBIRNEY: Objection; vague and</p> <p>18 foundation.</p> <p>19 THE WITNESS: During the time that I've</p> <p>20 been at AEMO, I'm certainly not aware of anything</p> <p>21 that would give me pause or concern with respect</p> <p>22 to working with Google being a risk to brand</p> <p>23 safety.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And then the last criteria, flexible</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. And how about with respect to Discovery?</p> <p>2 A. I don't know the answer to that one.</p> <p>3 Q. Okay. And how about with respect to</p> <p>4 display?</p> <p>5 A. I don't know which all partners may or</p> <p>6 may not be involved in display. I know that our</p> <p>7 MMM results have shown that display, in general,</p> <p>8 has not performed at the same efficient rate as</p> <p>9 other options available to us.</p> <p>10 Q. Okay. What is your assessment of</p> <p>11 Google's ability to maintain expected levels of</p> <p>12 brand safety?</p> <p>13 MR. MCBIRNEY: Objection; vague and</p> <p>14 foundation.</p> <p>15 THE WITNESS: I think there's a measure</p> <p>16 of risk assessment involved in that that we have</p> <p>17 to constantly assess and reassess in light of</p> <p>18 current market conditions and activities or</p> <p>19 events in the information sphere and that may</p> <p>20 change from time period to time period.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And does Google, in your view, help</p> <p>23 protect the brand safety of the Army?</p> <p>24 MR. MCBIRNEY: Objection; foundation.</p> <p>25 THE WITNESS: As a platform for the</p>	<p style="text-align: right;">Page 189</p> <p>1 cancellation terms adherence to industry-standard</p> <p>2 contractual out clauses, do you have any ability</p> <p>3 to assess Google's flexible cancellation terms,</p> <p>4 one way or another?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Do you recall attending a Google</p> <p>7 Marketing Live event?</p> <p>8 MR. MCBIRNEY: Objection; vague.</p> <p>9 THE WITNESS: Can you be specific about</p> <p>10 the timing?</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Sure can. Give me a sec.</p> <p>13 Summer of 2022.</p> <p>14 A. Is there a document that I can review?</p> <p>15 Q. I do not have it, no. I'm sorry.</p> <p>16 A. I have recollection of attending events</p> <p>17 with Google, but I can't attest to the date,</p> <p>18 specifically.</p> <p>19 Q. Okay. What -- how many events do you</p> <p>20 recall attending with Google?</p> <p>21 A. Two.</p> <p>22 Q. What were those two events that you are</p> <p>23 recalling?</p> <p>24 A. One was in Chicago at the local office</p> <p>25 -- I assume to be the local office of -- of</p>

<p style="text-align: right;">Page 190</p> <p>1 Google. And the other was in California at the</p> <p>2 headquarters.</p> <p>3 Q. Okay. Starting with the first event you</p> <p>4 recall at the local office of Google, what was</p> <p>5 that event? What -- what took place at that</p> <p>6 event?</p> <p>7 A. That was an educational event hosted</p> <p>8 by Google to inform Army marketers on Google</p> <p>9 products, how other customers have been able to</p> <p>10 be successful or not, TTPs or what we say in the</p> <p>11 Army, tactics, technique, procedures, meaning</p> <p>12 just generally how you go about things, so to</p> <p>13 share with us information about how we might</p> <p>14 either perform better or continue to perform</p> <p>15 well or use products effectively.</p> <p>16 Q. Did you find that event informative?</p> <p>17 A. Yes.</p> <p>18 Q. Did you find it useful?</p> <p>19 A. I found the discussion stimulating.</p> <p>20 I can't recall me specifically going back and</p> <p>21 -- and then using something from there in the</p> <p>22 course of my routine duties.</p> <p>23 Q. Did that educational event provide any</p> <p>24 value, from your point of view, to the Army?</p> <p>25 A. I would say in that knowledge and</p>	<p style="text-align: right;">Page 192</p> <p>1 A. I mean, I generally recall the room and</p> <p>2 that we had slides and that there were a number</p> <p>3 of presenters on a number of topics. I don't</p> <p>4 recall what all the topics were specifically,</p> <p>5 but --</p> <p>6 Q. Do you recall any of the topics?</p> <p>7 A. No, I don't.</p> <p>8 Q. Okay. Let's turn to the event at the</p> <p>9 California -- in California at HQ -- was that at</p> <p>10 Google's headquarters?</p> <p>11 A. It was.</p> <p>12 Q. Okay. And did other marketing</p> <p>13 professionals from the other branches of the</p> <p>14 military attend that, to your recollection?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What -- what was the purpose of</p> <p>17 that event?</p> <p>18 A. I was attending on behalf of</p> <p>19 Major General Fink. My understanding of the</p> <p>20 purpose, it was similar to the earlier meeting</p> <p>21 in Chicago, but a year later and, more broadly,</p> <p>22 participation from the other services, whereas</p> <p>23 the first was Army only. And this had other</p> <p>24 services, all, in my perception, with the same</p> <p>25 intent to educate the audience on certain aspects</p>
<p style="text-align: right;">Page 191</p> <p>1 education is always valuable, I certainly</p> <p>2 couldn't ascribe a particular quantity or figure</p> <p>3 or dollar figure of value.</p> <p>4 Q. Sure. But the knowledge and education</p> <p>5 that Google provided you at that event, did you</p> <p>6 consider that valuable?</p> <p>7 MR. MCBIRNEY: Objection. Asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: At the time, I felt</p> <p>10 the information and the conversations that it</p> <p>11 generated were helpful to the marketing team.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Do you know who from Google was at that</p> <p>14 event? Do you recall?</p> <p>15 A. There were a number of presenters, and,</p> <p>16 frankly, I don't remember everyone's name.</p> <p>17 Q. Do you remember anybody's name?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. I know that there was an individual who</p> <p>21 had government in their portfolio. But as far</p> <p>22 as all their names, I -- unfortunately, I don't</p> <p>23 recall.</p> <p>24 Q. Is there anything else that you, sitting</p> <p>25 here today, recall about that event?</p>	<p style="text-align: right;">Page 193</p> <p>1 of Google's product line and give examples of</p> <p>2 how some of their customers have used them</p> <p>3 effectively.</p> <p>4 Q. Did you find that event to be</p> <p>5 informative?</p> <p>6 A. I did. And I found it useful because</p> <p>7 it's one of the first events I was at where the</p> <p>8 other services were also there, and so it also</p> <p>9 enabled some cross-service discussion on</p> <p>10 challenges, successes.</p> <p>11 Q. Did you find that event to provide value</p> <p>12 to the Army?</p> <p>13 A. It did in that I actually was able to</p> <p>14 provide some -- or -- or put some face to names</p> <p>15 of my counterparts in the Air Force and Navy,</p> <p>16 which has facilitated some dialogue post that</p> <p>17 meeting.</p> <p>18 Q. What dialogue has that facilitated?</p> <p>19 What dialogue has that meeting facilitated with</p> <p>20 your counterparts in the other branches of the</p> <p>21 armed services?</p> <p>22 A. I'll occasionally reach out and ask</p> <p>23 something that they may be doing or see if there</p> <p>24 might be an opportunity for us to do something</p> <p>25 together, or just ask questions about approaches</p>

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<p style="text-align: right;">Page 194</p> <p>1 they may be taking. It's never anything specific</p> <p>2 in nature, other than general information-share.</p> <p>3 Q. Do you recall who attended from -- who</p> <p>4 from Google attended the event in California that</p> <p>5 you're recalling?</p> <p>6 A. There were a number of presenters,</p> <p>7 and they were from different divisions,</p> <p>8 organizations. I'm not sure how they're --</p> <p>9 Google organizations is what we would call them,</p> <p>10 but from different areas of the business who came</p> <p>11 and presented on various topics. Some of them</p> <p>12 were somewhat creative in nature. Some of the</p> <p>13 topics were more, I don't know, say analytic in</p> <p>14 nature, I mean, although we weren't talking</p> <p>15 about how to do regression models but some</p> <p>16 certainly were more focused on the creative</p> <p>17 aspect of what you might be showing and others</p> <p>18 more about how you might be using tools. I think</p> <p>19 -- you know, I don't know for sure -- actually, I</p> <p>20 know I don't know the names -- yeah -- of who</p> <p>21 presented.</p> <p>22 Q. Okay. Do you know an individual at</p> <p>23 Google named Sean Harrison?</p> <p>24 A. That name is familiar to me. He might</p> <p>25 have been one of the individuals at one of the</p>	<p style="text-align: right;">Page 196</p> <p>1 conversation with that individual on that topic</p> <p>2 was focused around what he and his team were</p> <p>3 doing to try to track down what had been</p> <p>4 occurring. It was new, so we didn't know,</p> <p>5 they didn't know. We just knew something was</p> <p>6 happening.</p> <p>7 That was the -- that was, essentially,</p> <p>8 the crux of that discussion.</p> <p>9 Q. Okay. The individual that you're</p> <p>10 recalling having this conversation with, did that</p> <p>11 person indicate to you that Google would take</p> <p>12 steps to address the problem?</p> <p>13 A. I don't recall if that was ever said.</p> <p>14 But I have no reason to believe that -- most</p> <p>15 likely, that was probably assumed on my part at</p> <p>16 the time, that, given a business relationship,</p> <p>17 it's generally understood, even though I don't</p> <p>18 have access to terms of any kinds of contracts or</p> <p>19 not, that good business partners will certainly</p> <p>20 try to do what they can to make good or to figure</p> <p>21 out what's been going on.</p> <p>22 Q. And do you have any -- what -- what</p> <p>23 -- what happened? What was the outcome of the</p> <p>24 -- of the effort to -- to get to the bottom of</p> <p>25 this false hit issue?</p>
<p style="text-align: right;">Page 195</p> <p>1 meetings, but I -- I don't know him and have</p> <p>2 never had an interaction with him outside of --</p> <p>3 if that's the same person, outside of one of</p> <p>4 those meetings.</p> <p>5 Q. Okay. So sitting here today, can you</p> <p>6 recall ever having any conversation with Sean</p> <p>7 Harrison about -- about -- well, about anything?</p> <p>8 A. Well, given that I'm not a hundred</p> <p>9 percent sure if that's the name of the person who</p> <p>10 I think it is, I can't say with certainty.</p> <p>11 Q. Okay. Are you recalling a conversation</p> <p>12 with some individual at Google, but you just</p> <p>13 don't know that person's name?</p> <p>14 A. I am.</p> <p>15 Q. Okay. What conversation are you</p> <p>16 recalling?</p> <p>17 A. The conversation I'm recalling was on</p> <p>18 the sidelines of the presentation in California,</p> <p>19 where we were notified of a number of false leads</p> <p>20 that were coming into the Army system through a</p> <p>21 Google product, in the thousands, which obviously</p> <p>22 would throw off a lot of our data systems in</p> <p>23 terms of false attribution. And also,</p> <p>24 potentially, our concern of being charged for</p> <p>25 things that weren't really happening. And the</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Yeah. I can't state with certainty,</p> <p>2 only as I recall the information now. Because</p> <p>3 once it was also being handled by the -- the data</p> <p>4 team, as well, I didn't look too much more deeply</p> <p>5 into a hundred percent technical answer of here's</p> <p>6 what happened. But, as I recall, there was some</p> <p>7 kind of a -- I don't know if the right term is</p> <p>8 a bot farm, or at least some malicious intent</p> <p>9 emanating, at least as was trackable, out of</p> <p>10 an Asian country that I believe to be the</p> <p>11 Philippines, if I recall correctly, but I</p> <p>12 could be mistaken. And somehow it was getting in</p> <p>13 through a MAC code, which is a Marketing Activity</p> <p>14 Code, that was assigned to Google efforts. And</p> <p>15 it was generating fake leads, or false -- or just</p> <p>16 it was submitting leads with false names and</p> <p>17 -- and -- and giving us the impression of an</p> <p>18 effectiveness of whichever of the products it</p> <p>19 was coming from. I don't recall which one.</p> <p>20 But -- but, essentially, that was the crux of it;</p> <p>21 we had some false leads emanating from some</p> <p>22 malicious activity from some third country.</p> <p>23 Q. And do you know if Google took any steps</p> <p>24 to put a stop to that malicious activity coming</p> <p>25 from a third country?</p>

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<p style="text-align: right;">Page 246</p> <p>1 for information relevant to this lawsuit?</p> <p>2 A. I did not.</p> <p>3 MS. GOODMAN: I reserve the remainder of</p> <p>4 my time for this deposition based on the improper</p> <p>5 privilege assertions made at the outset of the</p> <p>6 deposition. So I close the dep -- I'm holding</p> <p>7 the deposition open.</p> <p>8 MR. MCBIRNEY: Can I get a time check?</p> <p>9 THE VIDEOGRAPHER: We are at 5:55</p> <p>10 minutes.</p> <p>11 MR. MCBIRNEY: Okay. The government</p> <p>12 does not agree with your position that the</p> <p>13 deposition should remain open, but we understand</p> <p>14 your position.</p> <p>15 MS. GOODMAN: Okay.</p> <p>16 MR. MCBIRNEY: Off the record.</p> <p>17 THE VIDEOGRAPHER: Anything else for the</p> <p>18 record?</p> <p>19 MS. GOODMAN: Thank you, Colonel.</p> <p>20 THE WITNESS: Thank you very much.</p> <p>21 THE VIDEOGRAPHER: This marks the end of</p> <p>22 the deposition of Colonel John Horning. We're</p> <p>23 going off the record at 1753.</p> <p>24 (Deposition concluded -- 5:53 p.m.)</p> <p>25</p>	<p style="text-align: right;">Page 248</p> <p>1 Jimmy McBirney, Esq.</p> <p>2 jimmy.mcbirney@usdoj.gov</p> <p>3 August 21, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/18/2023, John Horning (#6060378)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 247</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 21st day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 249</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 John Horning (#6060378)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 John Horning Date</p> <p>25</p>

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1 United States, Et Al v. Google, LLC

2 John Horning (#6060378)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, John Horning, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 John Horning Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

17

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19 _____

NOTARY PUBLIC

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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